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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MICHAEL DENTON,

12 Plaintiff,

13 v.

14 LT. CHARLA JAMES-HUTCHISON,
15 SGT. JACKIE CARUSO,

16 Defendants.

CASE NO. 16-5314 RJB

ORDER ON PLAINTIFF'S
MOTION TO ALLOW OFFICER
MARK KNIGHTON TO TESTIFY
AT TRIAL

17 THIS MATTER comes before the Court on Plaintiff's Motion to Allow Disciplinary
18 Hearings Officer Mark Knighton to Testify at Trial. Dkt. 203. The Court has considered the
19 pleadings filed regarding the motion and the remaining record.

20 On April 28, 2016, Plaintiff, a prisoner acting *pro se*, filed this case pursuant to 42 U.S.C.
21 § 1983. Dkts. 1 and 4. This case is set to begin trial on October 29, 2018 on the Plaintiff's claim
22 that, while he was a pre-trial detainee in the Pierce County, Washington jail, Defendants
23 Lieutenant Charla James-Hutchinson and Sergeant Jackie Caruso violated his due process rights
24 when they revoked his good time credits. Dkt. 99.

1 **Motion:** In the current motion, Plaintiff moves the Court to allow Washington State
2 Penitentiary Disciplinary Hearings Officer Mark Knighton to testify at the trial. Dkt. 203.
3 Plaintiff’s motion states what Plaintiff would like Officer Knighton’s testimony to be, including:
4 what must be stated on disciplinary notice forms; all rights of inmates at disciplinary hearings;
5 that all hearings must be audio taped; that the inmate must be asked at the hearing, while the
6 audio tape recorder is on, if he or she received the notice form, the basis for the hearing, and
7 whether he or she “requested any witnesses statements from any other inmate or officer to be
8 retrieved by the disciplinary officer and served on the inmate before the hearing is conducted;”
9 and lastly, what Officer Knighton’s job is as a disciplinary officer. *Id.*, at 2-3.

10 Defendants respond and oppose the motion. Dkt. 208. They assert that Officer
11 Knighton’s testimony, and that of any other Washington Department of Corrections employee
12 regarding its’ practices, procedures or policies should be excluded as irrelevant under Fed. Evid.
13 R. 401, inadmissible under Fed. Evid. R. 402, and otherwise excludable under Fed. Evid. R. 403.
14 *Id.*

15 Plaintiff replies, and argues that Officer Knighton’s testimony is relevant because he is an
16 expert in the due process rights of prisoners at disciplinary hearings. Dkt. 217. He maintains
17 that the Defendants did not allow him to call witnesses at the hearings, did not inform him of his
18 rights, or audio tape the hearing. *Id.*

19 **Standard on Motion.** Fed. Evid. R. 401 provides, “evidence is relevant if: (a) it has any
20 tendency to make a fact more or less probable than it would be without the evidence; and (b) the
21 fact is of consequence in determining the action.” Under Fed. R. Evid. R. 402, “irrelevant
22 evidence is not admissible.” Further, “[t]he court may exclude relevant evidence if its probative
23 value is substantially outweighed by a danger of one or more of the following: unfair prejudice,
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1 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting
2 cumulative evidence.” Fed. R. Evid. Rule 403.

3 **Decision on Motion.** Plaintiff’s motion (Dkt. 203) should be denied without prejudice.
4 At this stage, Plaintiff’s proffered evidence is not relevant. The Supreme Court has held that
5 where, as here, an inmate has a protected liberty interest in good time credits, due process
6 requires that, before and at the disciplinary hearing, the inmate “receive: (1) advance written
7 notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety
8 and correctional goals, to call witnesses and present documentary evidence in his defense; and
9 (3) a written statement by the factfinder of the evidence relied on and the reasons for the
10 disciplinary action.” *Superintendent, Massachusetts Correctional Institution, Wapole v. Hill*,
11 472 U.S. 445, 454 (2001)(*internal citation omitted*). In the Order Adopting the Report and
12 Recommendation, this Court held that the Defendants met the first and third requirements. Dkt.
13 166. There are issues of fact as to the second requirement only: whether Plaintiff was given an
14 opportunity to call witnesses. The Defendants assert that they gave him the opportunity and
15 Plaintiff maintains they did not. Officer Knighton’s testimony regarding the practices, policies
16 and procedures at the state Department of Corrections is not relevant to the issue whether the
17 Pierce County, Washington Jail employees did or did not give Plaintiff an opportunity to call
18 witnesses. At this point, Plaintiff has not made a showing that this evidence is relevant to the
19 issues at trial, and so should be excluded under Fed. Evid. R. 401 and 402.

20 Moreover, the testimony that Plaintiff seeks to elicit regarding the practices, policies, and
21 procedures at the state prisons would, at least in part, present cumulative evidence. The
22 Defendants acknowledge that they had to provide him notice of the charges and a statement of
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1 reasons after the hearing. Further testimony that they had those obligations would be
2 unnecessarily cumulative and should be excluded under Fed. Evid. R. 403.

3 The motion (Dkt. 203) should be denied without prejudice.

4 **ORDER**

5 It is **ORDERED** that:

- 6 • Plaintiff's Motion to Allow Disciplinary Hearings Officer Mark Knighton to Testify at
7 Trial (Dkt. 203) **IS DENIED WITHOUT PREJUDICE.**

8 The Clerk is further directed to send uncertified copies of this Order to all counsel of
9 record and to any party appearing *pro se* at said party's last known address.

10 Dated this 30th day of July, 2018.

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12 ROBERT J. BRYAN
13 United States District Judge